

ILLINOIS POLLUTION CONTROL BOARD
June 20, 1991

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 90-56
)	(IEPA No. 295-90-AC)
)	(Administrative Citation)
)	
STEVE GILBERT,)	
)	
Respondent.)	

MR. WILLIAM SELTZER APPEARED ON BEHALF OF THE COMPLAINANT.

MR. STEVE GILBERT APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on an administrative citation filed by the Environmental Protection Agency ("Agency") against Steve Gilbert on July 6, 1990. The citation alleges that Mr. Gilbert violated provisions of the Illinois Environmental Protection Act ("Act") concerning open dumping resulting in litter. Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1021(q)(1).

Hearing was held on this matter on January 7, 1991 at 100 South Washington Street, Mansfield, Illinois. Mr. Allyn Colantino testified on behalf of the Agency. Mr. Gilbert testified on his own behalf. Closing arguments were waived in favor of post-hearing briefs. The Agency filed a closing argument on February 13, 1991. Mr. Gilbert filed a closing argument on February 19, 1991.

BACKGROUND

Mr. Steve Gilbert is the owner of a site located in Piatt County, Illinois designated by the Agency as No. 1478050004, commonly known as "White Heath/Gilbert." The site, approximately 57 acres, contains a pole barn, a shed and an asphalt road. On January 17, May 14 and August 21, 1990, Mr. Allyn Colantino, Agency field inspector, inspected the site. The initial inspection was conducted in response to a citizen's complaint and Mr. Colantino directly observed a large pile of wooden and metal debris. A copy of his inspection report was filed with the citation. On the basis of Mr. Colantino's direct observation, the Agency determined that Mr. Gilbert caused or allowed open dumping at the site in a manner which resulted in litter. Mr.

Colantino further established that Mr. Gilbert did not have a permit to operate a sanitary landfill. The administrative citation requested the Board to impose a penalty of \$500.00 plus any hearing costs incurred by the Board and the Agency. Mr. Gilbert contacted the Board by letter on July 16, 1990 and the Board construed the letter as a proper and timely petition for review.

APPLICABLE LAW

Section 21(q) of the Act States:

No person shall in violation of subdivision (a) of Section 21, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at a dump site:

1. litter; . . .

Penalties in actions of this type are \$500.00 for each provision, plus any hearing costs incurred by the Board and the Agency. Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1042(b)(4).

DISCUSSION

Mr. Colantino testified that the site in question first came to the Agency's attention in January, 1990 through an anonymous citizen complaint (R.8). Mr. Colantino inspected the site on January 17, 1990 and observed a pile of debris consisting of discarded furniture and metal materials. Upon a second inspection, on May 14, 1990 Mr. Colantino took several photographs of the property; these photographs were introduced at the Hearing as Group Exhibits Nos. 2 and 4 (R.32;IEPA Gr.Exh.2,4).

Following the initial inspection, the Agency spoke with Mr. Gilbert several times by telephone. Mr. Gilbert proposed burning the wood as part of a volunteer fire department training exercise. The Agency determined that this would amount to the disposal of waste by burning; an activity which requires an Agency permit. Because Mr. Gilbert did not have the requisite permit, and because it was unlikely that the Agency would approve such a permit, the Agency rejected that option (R.12,13). Mr. Gilbert then proposed burying the material on-site, an option also rejected by the Agency.

After several telephone conversations, the Agency issued an administrative warning notice ("AWN") which included a copy of the first inspection report. The AWN informed Mr. Gilbert that the Agency had determined that he had caused or allowed opening dumping resulting in litter, in violation of Section 21(q) the

Environmental Protection Act. The AWN gave Mr. Gilbert 60 days, until May 14, 1990, to come into compliance. Mr. Colantino reinspected the property on May 14, 1990 and observed nothing had been done. (R. 20-21).

The furniture found on-site originally belonged to the University of Illinois. Through a series of commercial transactions the furniture became the property of the individual who owned White Heath prior to Mr. Gilbert. The furniture was stored in the pole barn at White Heath, where it remained when Mr. Gilbert took possession of the property in January of 1989 (R.11,16-20). Mr. Gilbert subsequently moved the furniture outside and piled it next to the barn (R.52).

Mr. Gilbert testified he used the wooden furniture as kindling to heat a shop he owns at another location (R.53). He used the wood in this manner during the late winter of 1989 and throughout the winter of 1990 (R.53). The Agency concedes that some material had been used for fuel purposes but alleges that Mr. Gilbert was merely burning the wood little by little to avoid the cost of hauling the material to a landfill. Mr. Gilbert eventually had the wooden debris crushed into splinters and hauled to the landfill. The splinters filled six semi-truckloads and the disposal cost amounted to three thousand dollars (R.56).

In August, 1990 Mr. Gilbert contacted the Agency and stated he had cleaned up the site. The Agency requested photographs and removal receipts to verify the clean-up, which Mr. Gilbert supplied. After receiving the photographs and receipts, Mr. Colantino again inspected the site. Mr. Colantino testified that while most of the wood debris had been removed, the metal debris remained. He further testified that the photographs which Mr. Gilbert had supplied the Agency as proof of clean-up had been taken in a manner which would conceal the remaining metal debris (R.31).

ANALYSIS

The evidence in the record is largely un rebutted that Mr. Gilbert's property contained discarded furniture and other debris which had been, and continues to be, openly dumped on his property. While Mr. Gilbert contends that he planned to use the furniture as fuel, the quantity of the wood suggests that this was not the case. Moreover, the debris now largely consists of metal materials which cannot be used as fuel. In addition, the Board finds that Mr. Gilbert has failed to demonstrate that the violation resulted from uncontrollable circumstances. The Board, therefore, concludes that the furniture and metal materials have been improperly dumped. The Agency has thereby proven a violation of Section 21(q)(1) of the Act.

ORDER

1. Respondent is hereby found to have been in violation on May 15, 1990 of Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1021(q) (1).

2. Within 45 days of this Order Respondent shall, by certified check or money order, pay a civil penalty in the amount of \$500 payable to the Illinois Environmental Protection Trust Fund. Such payment shall be sent to:

Illinois Environmental Protection Agency
Fiscal Service Division
2200 Churchill Road
Springfield, Illinois 62706

Respondent shall also place his Federal Employee Identification Number or Social Security Number upon the certified check or money order.

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (Ill. Rev. Stat. 1989, ch. 120, par. 10-1003), from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal, during which payment of the penalty is stayed.

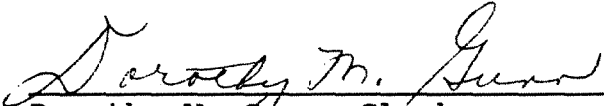
3. Within 30 days of this Order, the Agency shall file a statement of its hearing costs, supported by an affidavit, with the Board and with service upon Respondent. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon Respondent. Such filings shall be entered in Docket B in this matter.

4. Respondent is hereby given leave to file a reply/objection to the filings as ordered in paragraph 3 of this Order within 45 days of this Order.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 204 day of June, 1991 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board